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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,395	11/07/2001	Alan L. Backus	45891/GSL/A641	3764

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/31/2002

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,395

Applicant(s)

BACKUS ET AL.

Examiner

Drew E Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Priority

1. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification. This application filed under former 37 CFR 1.60 lacks the necessary reference to the prior applications. A statement reading "This is a continuation of Application No. 09/409,172, filed September 30, 1999 now abandoned, which was a continuation of Application No. 08,889,021, filed July 7, 1997 now abandoned." should be entered following the title of the invention or as the first sentence of the specification.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 recites the limitation "said constant source" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1761

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 1 and 3-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Bedford et al [Pat. No. 5,639,497].

Bedford et al teach a cooking device comprising a cooking enclosure (Figure 1, 1), an infrared heat source (Figure 3, 12), a motor powering a fan which draws in ambient air as well as circulating heated air (Figures 2-3, #13 & 15; column 6, lines 32-50), an adjustable vent (Figure 3, #49; column 4, lines 59-68), and a rotating food support spit (Figure 1, 5). Furthermore, the phrase "whereby air temperature inside... of heat inside said enclosure" in claim 1 is merely a preferred method of using the claimed apparatus and as such is not given patentable weight.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bedford et al as applied above, in view of McFarland [Pat. No. 2,898,437].

Art Unit: 1761

Bedford et al teach the above mentioned components. Bedford et al do not teach the spit and fan being powered by the same motor. McFarland teaches a cooking device comprising an enclosure (Figure 7, 10'), a radiant heat source (Figure 7, 36'), and a motor which powers both an air circulation fan and a spit (Figure 7; #64', 66', 116). It would have been obvious to one of ordinary skill in the art to incorporate the single motor construction of McFarland into the invention of Bedford et al since both are directed to convection ovens with rotary spits, since Bedford et al already includes a spit and fan with their respective motors (Figure 2, #13, 15, 31), and since the single motor construction of McFarland teaches the desirability and simplicity of having one motor run both the spit and the fan (column 5, lines 49-57) and the resultant savings in weight, cost, and power consumption to name but a few advantages.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Koether et al [Pat. No. 5,485,780] teach a rotisserie oven with forced airflow.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for

Art Unit: 1761

the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

A handwritten signature in black ink, appearing to read "Drew Becker", with a stylized flourish at the end.

Drew Becker
May 28, 2002